

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6817**

**BILL NUMBER: SB 395**

**NOTE PREPARED: Jan 10, 2014**

**BILL AMENDED:**

**SUBJECT: Bail.**

**FIRST AUTHOR: Sen. Steele**

**FIRST SPONSOR:**

**BILL STATUS: As Introduced**

**FUNDS AFFECTED: X GENERAL  
X DEDICATED  
FEDERAL**

**IMPACT: State & Local**

**Summary of Legislation:** The bill provides that, if a court admits a defendant to bail, the court may require the defendant to do one of the following as selected by the defendant:

- (1) Execute a bail bond with sufficient solvent sureties.
- (2) Deposit securities in an amount equal to the bail.
- (3) Execute a bond secured by real estate in the county, where thirty-three hundredths of the true tax value less encumbrances is at least equal to the amount of the bail.
- (4) Execute a bail bond by depositing cash with the clerk of the court in an amount not less than 15% of the bail.

It removes a provision that allows a court to require a defendant who elects to deposit cash or cash and another form of security as bail to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

It also provides that, if an individual deposits cash to execute a bail bond: (1) the clerk shall issue the individual a receipt for the cash; and (2) the individual must possess a copy of the receipt and a valid government-issued photographic identification card to receive any remission of the cash the individual may otherwise be entitled to receive.

The bill provides that, if a defendant: (1) was admitted to bail by depositing cash or securities; and (2) has failed to appear before the court as ordered; the court shall declare the bond forfeited 120 days after the defendant's failure to appear and issue a warrant for the defendant's arrest.

The bill specifies that, under the law concerning bail and bail procedure, a court: (1) may only declare a bond forfeited if a defendant fails to appear before the court as ordered; and (2) may not declare a bond forfeited because the defendant fails to perform any other condition of bail.

It makes conforming amendments.

**Effective Date:** July 1, 2014.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** Any increase in the use of bail potentially decreases the number of defendants in the jail population. The increase in the percentage of the bond that must be deposited to execute a cash bail bond could reduce the number that use a cash bail bond. However, those defendants may select a different method of providing collateral to secure release on bail. Additionally, defendants in more counties may have access to bail, as the defendant rather than the court would select the method of collateralization.

**Explanation of Local Revenues:** Currently, defendants admitted to bail by deposit of cash pay up to 10% of the amount deposited, not to exceed \$50, as an administrative fee. Also, the party providing cash bail (the bailee and anyone providing the cash) must sign an agreement that the deposit will be used to pay costs and fines assigned to the defendant. The bill provides that in lieu of the court retaining these amounts, the court may order the defendant to pay costs of representation, fines, costs, fees, and restitution if the defendant is convicted.

Fewer defendants may elect to deposit cash as bail as a result of the increase to 15% for the deposit. On the other hand, more defendants may select cash bail if the deposit is not retained. Any change, then, cannot be calculated because the change in the number of defendants selecting cash cannot be determined.

Additionally, the court may incur additional cost collecting judgements and restitution against the defendant, if the costs and fines are not taken from the deposit.

**Additional Information: Bail Bonds and Collateral:** Bail bond orders are the set of terms and conditions decided by a judge in order to release a defendant from jail between the time of arrest and the time of the case judgment. Bail bonds usually involve some sort of collateral supplied by the defendant to ensure that the defendant appears in later court proceedings and agrees to the conditions of release.

This collateral can come in the form of: (1) a cash bond, where all the bail money is posted up front; (2) a property bond, where property equal in value to the bond is offered; or (3) a surety bond issued by a bondsman who posts bond for a defendant in exchange for a nonrefundable premium.

Under the bill, the defendant could select the method of securing the bail bond. Defendants selecting a cash bail bond would deposit 15% of the bail with the clerk of the court instead of 10% set in current law. The defendant would have to produce more cash, which may lead more defendants to select another form of collateral.

*Bond Administration Fee:* Under current law, when a defendant deposits a cash bond, the court collects a bond administration fee of up to 10% of the monetary value of the bond or \$50, whichever is less. The fee is deposited in the county or local unit general fund, depending on the court collecting the fee.

*Forfeiture:* Under current law, the clerk of the circuit court may also retain all or a part of the cash to pay publicly paid costs of representing the defendant in court and any fines, costs, fees, and restitution that the court may order the defendant to pay. Under the bill, these provisions would be repealed so that the deposit would be returned in full and the defendant would be responsible for payment of these costs and fines. Also, the court could not order forfeiture of the cash bond, other than when the individual fails to appear, and not for any other failures to perform any other conditions of bail.

*Counties Potentially Affected:* The number of counties and the number of accused persons that this bill could affect are not known. Since the clerk of the circuit court can retain a bond administration fee, the number of counties reporting the bond administration fee can be an indication of which counties use cash bond option. In CY 2012, 71 counties reported collecting the bond administration fee to the Indiana Supreme Court.

	CY 2009	CY 2010	CY 2011	CY 2012
Revenue from Bond Administration Fee (in Millions)	\$1.49	\$1.35	\$1.38	\$1.43
Number of Counties Reporting Revenue	61	63	66	71

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts with criminal jurisdiction; county sheriffs.

**Information Sources:** *2012 Revenues and Expenditures* and *Trial Court Fee Manual* accessed on the State Court Administrator's website.

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